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8 **UNITED STATES BANKRUPTCY COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 In re

12 HYPERIKON, INC.

13 Debtor
14

Bankruptcy Case No. 21-01776-LT-7

**OPPOSITION TO EMERGENCY
MOTION**

15 DECLARATION OF TRUSTEE,
16 LEONARD J. ACKERMAN, IN
17 OPPOSITION TO SREIT 4820
18 INDIANAPOLIS DRIVE, LLC'S
19 EMERGENCY MOTION UNDER
20 SECTION 365(d)(3) OR, IN THE
ALTERNATIVE, FOR ADEQUATE
PROTECTION UNDER 363(e)

21 Date: May 27, 2021

22 Time: 2:00pm

23 Dept.: 3

Judge: Taylor

24 I, Leonard J. Ackerman, declare:
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1 1. I am the Chapter 7 Trustee in the above-entitled matter. The following is
2 true of my own personal knowledge, and if called as witness, I could and would
3 testify competently thereto.
4

5 2. The bankruptcy petition was filed on April 30, 2021. The initial Section
6 341(a) meeting is scheduled for June 3, 2021. Accordingly, I have not yet had
7 an opportunity to question the Debtor under oath, as to the various aspects of
8 the business.
9

10 3. Movant asserts, without any evidence whatsoever, that this is not a large
11 or complex bankruptcy case. (Doc. 18, ¶ 27, l. 7). Nothing could be further
12 from the truth. In the approximately three weeks since the petition was filed, I
13 have discovered all of the following.
14

15 a) On its Summary of Schedules, the Debtor lists assets, consisting entirely of
16 personal property of over **8 million dollars**. I have not yet determined the
17 true value of this property, however, I have determined that the Debtor's
18 activities are far flung, with its major business activity apparently consisting
19 of sales of lighting accessories on Amazon, with goods stored in fulfillment
20 centers, believed to be located throughout the country, some waiting to be
21 delivered, and some stored in facilities controlled by third parties and some,
22 apparently, controlled by Amazon itself.
23

24 b) One of the warehouses, which apparently housed a large portion of
25 inventory, was located in Indianapolis, with no security system, and the
26 Debtor informed me that the key was located under the stairs. I had to
27 arrange to have an inventory taken in Indiana and have the locks changed. I
28

1 am also in the process of dealing with a possible theft at that location and
2 dealing with law enforcement in Indiana.

3
4 c) Additionally, I am informed and believe, based on documents supplied by
5 the Debtor, that the Debtor has done business and owes sales tax in Canada,
6 and has or had a sales office in Tijuana, Mexico. There is also a purported
7 priority Customs Claim, in an amount in excess of \$1,000,000.00
8 apparently held by the Department of Homeland Security, that required
9 attention by myself and my counsel to determine if it was secured. (Doc. 1,
10 p.17).

11
12 d) Finally, I learned of another potential asset that was not listed on the
13 schedules, when I was contacted by the United States Attorney's Office
14 Victim-Witness Coordinator for assistance in obtaining a Victim's Impact
15 Statement from the Debtor, for the potential benefit of the bankruptcy
16 estate, via a possible future restitution order. Apparently, the Debtor's
17 former bookkeeper had been indicted for wire fraud, among other things,
18 for allegedly embezzling more than \$175,000 from the Debtor
19
20

21 e) The movant also asserts, again without any evidentiary support whatsoever,
22 that "[o]n the petition date, the Debtor turned over cash and accounts to the
23 Trustee that the Trustee could use to satisfy the Lease obligations multiple
24 times over." (Doc. 18, ¶ 28, l. 1-2). This is simply and patently false. The
25 Debtor did not turn over a single dime to me on the petition date. I made
26 demands to several banks for the turnover of funds on deposit. On May 12,
27 2021, almost two weeks after the petition was filed, I received a check for
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1 \$80,251.83 from City National Bank. These were the first and only funds I
2 received in connection with this Bankruptcy Case prior to the date Movant
3 filed its emergency motions. After the emergency motion was filed,
4 I did pick up additional checks from my Post Office Box in
5 connection with this matter, including a check for \$471,978.55 from
6 Pacific Mercantile. However, for the reasons noted in the following
7 paragraph, I am not currently able to spend any of these funds.
8
9

10 f) As noted above, the Section 341(a) has not yet been held. According to the
11 Debtor's schedules, the Debtor does not have a single secured creditor.
12 (Doc.1. p. 16). The Debtor did list the U.S. Small Business Administration
13 as a general unsecured creditor in the amount of \$451,027.00 with respect
14 to a PPP Loan. (Doc. 1, p. 23).
15

16 g) However, a Uniform Commercial Code Financing Statement Search run by
17 my counsel on May 21, 2021 turned up a UCC Financing Statement filed
18 by SBA on May 17, 2020. A copy of that Financing Statement is attached
19 hereto as Exhibit 1. Despite repeated email and voice mail requests from my
20 counsel, Debtor's counsel has not provided any information with respect to
21 either this UCC Financing Statement or other financing statements that she
22 located. In fact, it was not until after the emergency motions were filed, that
23 Debtor's counsel responded at all, and indicated that he had no information
24 because he had not heard from his client. Accordingly, I have not been able
25 to determine whether the SBA Financing Statement, (or any of the other
26 financing statements my counsel located), are valid. Nor have I yet been
27
28

1 able to trace any of the funds I now have on hand. Unless and until these
2 issues are resolved, none of the funds on hand are available to pay any
3 administrative expense- rent or otherwise- as they might be subject to a
4 security interest.
5

6 h) I have NOT received a single rent payment from HomeGoods since the
7 filing of the bankruptcy petition. I am informed and believe that
8 HomeGoods may have transferred the sublease rent that would have been
9 due to the Debtor on May 1, 2021, electronically, early, and prior to the
10 filing of the bankruptcy petition, but have not yet been able to trace any
11 funds.
12

13 i) If it is determined that all or most of the inventory and/or intellectual
14 property is subject to a valid security interest and/or that other hard assets
15 may also be subject to other security interests, then it may be that the only
16 asset of the estate that I may be able to successfully monetize, (unless, of
17 course, there are avoidance claims), may be the HomeGoods sublease,
18 which, as the Movant notes, is sublet at a substantially higher base
19 monthly rental than the main lease.
20

21 j) I am further informed and believe that Home Goods is waiting for
22 direction from the Court with respect to any future rentals and, in the
23 interim, that Counsel for Home Goods has informed my counsel that he
24 instructed his client to reserve any rents due under the sublease beginning
25 with the June 1, 2021 rent. I would be happy to provide information as to
26 that reserve when it becomes available to me. I have not consented to the
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28

1 reserve format or waived any rights in that regard, but am just informing
2 the Court of my understanding of HomeGoods' position.

3
4 4. I need the additional time, which may be available under Section
5 365(d)(5), to determine if the rent which apparently had been paid pre-petition
6 to the Debtor for the sublease is available for my use or subject to a security
7 interest, and to determine if the estate is solvent or may be administratively
8 insolvent. With respect to all future rents, counsel for the subtenant indicates
9 that the June rent, and all further rent would be reserved. The sublease rent is
10 more than the rent owing to Movant under the master lease. Accordingly, no
11 harm, whatsoever, will befall the Movant if the time is extended, as permitted
12 by the Bankruptcy Code, to June 29, 2021.
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15 5. To summarize-

16 a) I have not received any rents from the subtenant, who apparently paid the
17 sublease rent due May 1, 2021 to the Debtor, pre-petition,

18 b) It is my understanding that the Subtenant intends to reserve the June
19 sublease rent and all future rents, until the issues surrounding the lease dispute
20 are resolved,
21

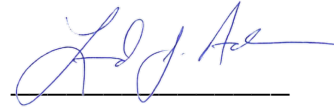
22 c) I need the additional time available under section 365(d)(3) through June 29,
23 2021 to determine if any of the funds that I have on hand are subject to a
24 security interest.
25

26 d) I am entitled to sanctions against Movant and its counsel for abuse of the
27 emergency motion procedures.

28 e) I cannot either admit or deny the factual assertions in the Movant's papers with
respect to rent which might be have been owed by the Debtor, as the Section 341

1 meeting has not yet been held, and Debtor apparently has not been in touch
2 Debtor's counsel since the motions were filed.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct. Executed on May____, 2021 at
5 San Diego, California.
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9 Leonard J. Ackerman, Trustee
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UCC FINANCING STATEMENT**FOLLOW INSTRUCTIONS****A. NAME & PHONE OF CONTACT AT FILER (optional)**

Corporation Service Company
800-858-5294

B. E-MAIL CONTACT AT FILER (optional)**C. SEND ACKNOWLEDGMENT TO: (Name and Address)**

CORPORATION SERVICE COMPANY
801 ADLAI STEVENSON DRIVE
Springfield, IL 62703-4261
USA

DOCUMENT NUMBER: 88814170002**FILING NUMBER:** 20-7778762076**FILING DATE:** 05/17/2020 09:30

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1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	1a. ORGANIZATION'S NAME Hyperikon, Inc.				
	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
1c. MAILING ADDRESS 707 BROADWAY STE 800		CITY SAN DIEGO	STATE CA	POSTAL CODE 92101	COUNTRY USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
2c. MAILING ADDRESS		CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

OR	3a. ORGANIZATION'S NAME U.S. Small Business Administration				
	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX	
3c. MAILING ADDRESS 10737 Gateway West, #300		CITY El Paso	STATE TX	POSTAL CODE 79935	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

All tangible and intangible personal property, including, but not limited to: (a) inventory, (b) equipment, (c) instruments, including promissory notes (d) chattel paper, including tangible chattel paper and electronic chattel paper, (e) documents, (f) letter of credit rights, (g) accounts, including health-care insurance receivables and credit card receivables, (h) deposit accounts, (i) commercial tort claims, (j) general intangibles, including payment intangibles and software and (k) as-extracted collateral as such terms may from time to time be defined in the Uniform Commercial Code. The security interest Borrower grants includes all accessions, attachments, accessories, parts, supplies and replacements for the Collateral, all products, proceeds and collections thereof and all records and data relating thereto. EXEMPT Per California Government Code Section 6103 PLEASE EXPEDITE 437518 7410

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:

[182250012]

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